

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SOHAIL MASOOD,

Plaintiff,

v.

PARVEEN SALEEMI,

Defendant.

CASE NO. C06-1104JLR

ORDER

I. INTRODUCTION

This matter comes before the court on Defendant Parveen Saleemi's motion for summary judgment (Dkt. # 48) and Plaintiff Sohail Masood's motion to lift the stay on discovery (Dkt. # 50). Although the parties have requested oral argument, the court finds these motions appropriate for disposition based on the parties' briefs¹ and accompanying declarations. For the reasons stated below, the court GRANTS Ms. Saleemi's motion for summary judgment (Dkt. # 48), and DENIES as moot Mr. Masood's motion to lift the stay on discovery (Dkt. # 50).

¹Ms. Saleemi timely filed her reply brief in support of her motion for summary judgment on May 17, 2007 (Dkt. # 60). Shortly thereafter, without seeking leave of the court, Ms. Saleemi filed a second, substantively amended, reply brief (Dkt. # 65). Ms. Saleemi's filing of a second reply brief violates this court's local rules; accordingly, the court considers only Ms. Saleemi's first reply brief.

II. BACKGROUND

On April 16, 2007 Ms. Saleemi filed a motion for summary judgment, which raises three legal issues: (1) whether the court has subject matter jurisdiction of this case under the probate exception to federal jurisdiction; (2) whether Mr. Masood may assert claims on behalf of the estate of Khatoon Shahood; and (3) whether Mr. Masood's amended complaint states claims upon which relief can be granted. In addition, Ms. Saleemi's motion contains negative factual contentions addressing the elements of Mr. Masood's claims. On May 1, 2007, Mr. Masood filed a motion to lift the stay on discovery and to extend the date for his response to Ms. Saleemi's factual assertions under Federal Rule of Civil Procedure 56(f). Shortly thereafter, the parties filed a stipulation regarding their pending motions (Dkt. # 53). In the stipulation, Mr. Masood agreed to respond to the three legal issues identified above, for which further discovery would be futile. Pursuant to the parties' stipulation, the court resolves these threshold issues before reaching Mr. Masood's motion to lift the stay. The court therefore relies on Mr. Masood's allegations as contained in his amended complaint, which are summarized here (Dkt. # 46).

Mr. Masood asserts claims against Ms. Saleemi, his sister, on his own behalf and as the "holder, entirely or in major part," of tort claims for injury to their mother, Khatoon Shahood. Mr. Masood is an Oregon resident. Ms. Saleemi is a Washington resident. Ms. Shahood, died in Karachi, Pakistan in late 2003. Mr. Masood contends that as Ms. Shahood's sole or majority heir, he is authorized to act as the personal representative of Ms. Shahood's Estate (the "Estate").²

²According to Mr. Masood, Ms. Saleemi has no ownership interest in the Estate's claims, because Ms. Saleemi proximately caused the death of Ms. Shahood. Mr. Masood admits that other heirs may also be entitled to inherit under the Pakistani law of intestate succession, but avers that he cannot locate these heirs.

1 Mr. Masood's claims against Ms. Saleemi arise from events occurring in Karachi,
2 Pakistan. According to Mr. Masood, he provided financial support to his mother for more
3 than 25 years prior to her death. In 1995, he purchased and transferred title of a residence
4 in Karachi, Pakistan to Ms. Shahood. In late 1996 or 1997, Ms. Saleemi moved to the
5 Karachi residence to live with Ms. Shahood. Mr. Masood agreed to provide money to
6 support the household in exchange for Ms. Saleemi's care of their ailing mother. Mr.
7 Masood alleges that in January or March 2003, Ms. Saleemi kidnapped Ms. Shahood
8 from her residence and kept her concealed in an apartment located in a "seedy" area of
9 Karachi. According to the complaint, Ms. Saleemi denied Ms. Shahood proper
10 medication and medical care in order to diminish her mother's mental faculties, and
11 thereby facilitated the fraudulent transfer of Ms. Shahood's assets to herself. Mr. Masood
12 alleges that Ms. Saleemi then abandoned Ms. Shahood in Pakistan and, acting in concert
13 with others, concealed and confined Ms. Shahood during the final months of her life.
14 According to Mr. Masood, Ms. Saleemi's actions, including the intentional withholding
15 of necessary medical care, hastened Ms. Shahood's death. Allegedly, Ms. Shahood was
16 secretly buried without proper religious observances. Mr. Masood contends that he did
17 not discover his mother's burial site or Ms. Saleemi's whereabouts, until 2005 or 2006.

18 Mr. Masood asserts claims on behalf the Estate under Pakistani law, including
19 false imprisonment, intentional infliction of emotional distress, and abuse of corpse. He
20 additionally asserts a claim on his own behalf under Washington or Oregon law for
21 intentional infliction of emotional distress.

22 Discovery in this case is stayed. The court granted Ms. Saleemi's November 30,
23 2006 motion for a protective order (Dkt. # 13), in which she sought to stay all discovery,
24 arguing that Mr. Masood's claim to represent the Estate was a "fraud upon [Ms. Saleemi]
25 and the court." Mot. at 5. Ms. Saleemi also averred that certain matters alleged in Mr.
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1 Masood's original complaint are the subject of pending litigation in the United Kingdom
2 and Karachi, Pakistan, claiming that Mr. Masood is simply seeking discovery here in
3 furtherance of those suits. Id. at 4.³ Mr. Masood filed a statement concerning his status
4 as representative of the Estate (Dkt. # 18), and a motion for leave to file an amended
5 complaint (Dkt. # 29), which the court granted.⁴ Ms. Saleemi now moves for summary
6 judgment.
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8 III. ANALYSIS

9 Although Ms. Saleemi captioned her motion as one for summary judgment, it is
10 equivalent to a motion to dismiss in challenging only the sufficiency of Mr. Masood's
11 pleadings. The court thus treats Ms. Saleemi's motion as a motion to dismiss under
12 Federal Rule of Procedure 12(b)(6). See Mullis v. United States Bank. Ct., 828 F.2d
13 1385, 1387 n.6 (9th Cir. 1987). Accordingly, the court (1) construes the complaint in the
14 light most favorable to Mr. Masood; (2) accepts all well-pleaded factual allegations as
15 true; and (3) determines whether Mr. Masood can prove any set of facts to support a
16 claim that would merit relief. See Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 337-38
17 (9th Cir. 1996).
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21 ³Mr. Masood's original complaint asserted claims for breach of trust and fraud. See
22 Compl. (Dkt. # 1). Mr. Masood alleged that Ms. Saleemi exercised undue influence over Ms.
23 Shahood, who transferred title of the Karachi residence to Ms. Saleemi. Id. Mr. Masood also
24 alleged that Ms. Saleemi fraudulently obtained her mother's power of attorney, forging
25 documents purporting to transfer millions of dollars worth of stock shares in a Guernsey holding
26 company to herself and third parties. Id. Mr. Masood admitted that he is currently pursuing these
27 allegations in an ongoing quiet title action in Karachi, Pakistan (originally filed against both Ms.
28 Shahood and Ms. Saleemi), and in ongoing litigation concerning the stock shares in Guernsey and
London, United Kingdom (filed against Ms. Saleemi and third parties). See Pl.'s Reply to Order
to Show Cause at 11 (Dkt. # 38).

⁴Mr. Masood's sought to clarify his status as a representative of the Estate in his amended
complaint. See Mot. for Leave to Amend (Dkt. # 29). In addition, Mr. Masood withdrew his
claims for fraud and breach of trust from the amended complaint. See Am. Compl.

A. The Probate Exception to Federal Jurisdiction

At the threshold, the court rejects Ms. Saleemi's argument that this court lacks subject matter jurisdiction because Mr. Masood's claims fall within the probate exception to federal jurisdiction. The "probate exception" is a historical aspect of federal jurisdiction that holds "probate matters" are excepted from the scope of federal diversity jurisdiction. Marshall v. Marshall, 547 U.S. 293, 126 S.Ct. 1735, 1746 (2006) (citing Markham v. Allen, 326 U.S. 490, 494 (1946)). As recently clarified in Marshall, the probate exception reserves to state probate courts: (1) the probate or annulment of a will; (2) administration of a decedent's estate; and (3) disposing of property in the custody of a state probate court. Id. at 1748. The exception does not "bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction." Id. The claims contained in the amended complaint do not involve the probate or annulment of a will, administration of an estate, nor property in the custody of a state or Pakistani probate court. Mr. Masood's claims sound in tort, which under Marshall, fall within the subject matter jurisdiction of a federal court sitting in diversity.

B. Mr. Masood's Claims for Injury to the Estate

Ms. Saleemi argues that under Pakistani law, Mr. Masood lacks "standing" to personally assert claims on behalf of the Estate because he has not been appointed as its personal representative, executor, or administrator. Mr. Masood counters that as Ms. Shahood's sole or majority heir, Pakistani law confers "standing" upon him to assert claims for injury to Ms. Shahood. The court initially addresses the distinction between standing and capacity to sue as a representative, if only to elucidate why the parties' extensive briefing on Pakistani authority – ostensibly governing the question of standing in this suit – is of little assistance to the court. The court concludes that under relevant

1 federal authority, Federal Rule of Civil Procedure 17(b), Mr. Masood lacks the capacity
2 to pursue claims as a representative of the Estate.

3 Mr. Masood's ability to assert claims on behalf of the Estate is not a question of
4 standing. Standing involves a determination of whether a plaintiff can show an injury in
5 fact, traceable to the conduct of the defendant. See Allen v. Wright, 468 U.S. 737, 751
6 (1984). According to the amended complaint, the Estate could trace a direct injury to the
7 alleged acts of Ms. Saleemi. Thus, the Estate, which allegedly suffered false
8 imprisonment and the denial of medical care resulting in wrongful death, has standing to
9 bring this action.

11 Rather, the question before the court is whether Mr. Masood may assert claims on
12 behalf of the Estate. This involves determining whether Mr. Masood has the capacity to
13 bring suit as representative. See Firestone v. Galbreath, 976 F.2d 279, 283 (6th Cir.
14 1992); Glickstein v. Sun Bank/Miami N.A., 922 F.2d 666, 670 (11th Cir. 1991),
15 abrogated on other grounds by Saxton v. ACF Indus., Inc., 254 F.3d 959 (11th Cir. 1991).
16 Instructive of this distinction is Firestone, wherein the Sixth Circuit dismissed claims
17 brought by plaintiffs on behalf of their deceased grandmother, reasoning that the
18 grandchildren lacked capacity to bring suit as representatives of the deceased. See
19 Firestone, 976 F.2d at 283. The Sixth Circuit observed that the district court had
20 improperly dismissed the claims on the ground that the grandchildren lacked standing,
21 noting that attorneys and courts frequently confuse the concepts of standing with that of
22 capacity to sue. Id. (citing Charles A. Wright, Arthur A. Miller, & Mary K. Kane,
23 Federal Practice and Procedure § 1542 (1990)).

26 In civil cases brought in federal court, Federal Rule of Civil Procedure 17(b)
27 governs a party's capacity to sue. That rule provides:
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1 The capacity of an individual, other than one acting in a representative
2 capacity, to sue or be sued shall be determined by the law of the individual's
3 domicile. The capacity of a corporation to sue or be sued shall be determined
4 by the law under which it was organized. In all other cases capacity to sue or
be sued shall be determined by the law of the state in which the district court
is held

5 Fed. R. Civ. P. 17(b). As Mr. Masood seeks to represent the Estate, Rule 17(b) requires
6 the court to look to the law of the state in which this court sits.⁵

7 Accordingly, the court applies Washington law, which provides that a plaintiff in a
8 wrongful death or personal injury action on behalf of a deceased must be the personal
9 representative of the deceased's estate. See RCW §§ 4.20.010, 4.20.020, 4.20.060.

10 Correspondingly, Washington law does not permit heirs to bring such claims without first
11 obtaining appointment as a personal representative. Beal v. City of Seattle, 954 P.2d 237,
12 240 (Wash. 1998) ("A wrongful death action must be brought by the personal
13 representative of the decedent's estate and cannot be maintained by the decedent's
14 children or other survivors.") (citation omitted); Benoy v. Simons, 831 P.2d 167, 170
15 (Wash. Ct. App. 1992) (dismissing claims under RCW §§ 4.20.020 and 4.20.060 brought
16 by grandparents of a minor child for failure to establish the appointment of a personal
17 representative); Hatch v. Tacoma Police Dept., 27 P.3d 1223, 1224 (Wash. Ct. App.
18 2001) (holding spouse could not bring post-death loss of consortium claim where she was
19 not the personal representative of her deceased husband's estate). The term "personal
20 representative" includes executor, administrator, special administrator, guardian or
21 limited guardian, and special representative. See RCW § 11.02.005.

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25 ⁵In Pantano v. United Med. Labs., 456 F.2d 1248, 1249-50 (9th Cir. 1972), for example,
26 the Ninth Circuit applied the law of Oregon, where the district court sat, in holding that a special
27 administrator of an estate appointed under Nebraska law lacked capacity to bring suit, because,
28 under Oregon law, nonresidents were not qualified to act as administrators of an estate. See also
Firestone, 976 F.2d at 283 (holding that heirs lacked capacity to bring suit on behalf of estate,
because the law in which the district court sat permitted only executors to bring such claims, and
the heirs had not obtained such an appointment).

1 Despite Ms. Saleemi's contention that Mr. Masood has not been appointed as a
2 representative of the Estate, Mr. Masood fails to come forward with any claim that he has
3 obtained such an appointment. He argues only that under Pakistani law (and by
4 incorporation Muslim law), Ms. Shahood's personal injury claims "vest immediately on
5 her death in her legal heirs . . . without the need for any court appointed executor or
6 administrator or any court action of any kind." Resp. at 2. The court finds that,
7 regardless of Mr. Masood's authority to sue under Pakistani law, his capacity to sue on
8 behalf of the Estate in this court is governed by Rule 17(b). Mr. Masood does not assert
9 that he has obtained, or is seeking, appointment as an executor, administrator, or other
10 form of personal representative under Washington law.
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12 The court further finds that Ms. Saleemi's contentions, although couched as
13 objections to "standing," are sufficient to satisfy Federal Rule of Civil Procedure 9(a),
14 which provides that defendant must raise a Rule 17(b) lack of capacity defense by
15 "specific negative averment" either by motion before pleading, or as an affirmative
16 defense in the answer. See Fed. R. Civ. P. 9(a); De Saracho v. Custom Food Mach., Inc.,
17 206 F.3d 874, 878-879 (9th Cir. 2000) (holding that defendant waived lack of capacity
18 defense by not raising the issue until week before trial).⁶ Ms. Saleemi's first answer to
19 the complaint, filed on September 8, 2006, alleged that Mr. Masood "lacks standing to
20 assert claims on behalf of the Estate of Khatoon Shahood." Answer at 3 (Dkt. # 5). The
21 gravamen of Ms. Saleemi's "standing" argument is that Mr. Masood failed to allege or
22 establish appointment as an executor, administrator, or other representative of the Estate.
23 See, e.g., Mot. at 6 ("Since Sohail Masood is neither an executor nor an administrator of
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27 ⁶But see Brown v. Williamson, 134 F. Supp. 2d 1286, 1291 (D.C. Ala. 2001) ("[W]here
28 the lack of capacity appears affirmatively on the face of the complaint, specific averment is not
necessary.") (citing Comstock v. Pfizer Ret. Annuity Plan, 524 F. Supp. 999, 1002 (D. Mass.
1981)).

1 Khatoon Shahood's estate he has no standing to maintain any claims on behalf of her
2 estate . . .); Objections to Proposed Am. Compl. at 3 (“[U]nless and until Sohail Masood
3 is appointed as the personal representative of his mother's estate, he has no standing by
4 the laws of Pakistan (or the laws of the USA) to assert tort claims for general damages on
5 behalf of the deceased or her estate.”). Thus, while Ms. Saleemi may have couched her
6 objections in terms of standing, she has consistently contested what is essentially Mr.
7 Masood's capacity to pursue this suit as a representative of the Estate. As such, the court
8 finds that Ms. Saleemi's argument suffices as “specific negative averment” under Rule
9 9(a).
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11 Because Mr. Masood fails to answer Ms. Saleemi's contentions with any argument
12 that he has obtained an appointment as an administrator, executor, or personal
13 representative of the Estate under Washington law, the court concludes that Mr. Masood
14 lacks capacity to sue as a representative. The court thus grants Ms. Saleemi's motion and
15 dismisses all claims Mr. Masood asserts on behalf of the Estate.
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17 **C. Mr. Masood's Personal Claim for Intentional Infliction of Emotional Distress**

18 The court next addresses Ms. Saleemi's argument that Mr. Masood's personal tort
19 allegations fail to state claims upon which relief may be granted. In light of the court's
20 holding above, the court does not address the claims for injuries to the Estate. As to Mr.
21 Masood's personal claim against Ms. Saleemi for intentional infliction of emotional
22 distress (“IIED”), the court concludes that his allegations, accepted as true and taken in a
23 light most favorable to Mr. Masood, are insufficient to state a claim upon which relief
24 may be granted.
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26 Mr. Masood alleges that Ms. Saleemi's actions, including kidnapping Ms.
27 Shahood, concealing her whereabouts, denying Ms. Shahood medication and medical
28 care to induce fraud, creating and disseminating fraudulent documents in Ms. Shahood's

1 name, and burying Ms. Shahood's body in a secret location without religious
2 observances, were undertaken to cause Mr. Masood emotional distress. Am. Compl. ¶
3 29. As a proximate cause of Ms. Saleemi's actions, Mr. Masood claims to have suffered
4 mental distress, depression, and anxiety. Id. ¶ 30.

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6 The court applies the choice of law provisions of the forum state to determine the
7 substantive law governing this claim. See Fields v. Legacy Health Sys., 413 F.3d 943,
8 950 (9th Cir. 2005) (citation omitted). Under Washington law, the rights and liabilities of
9 the parties in cases sounding in tort are determined by the local law of the state which,
10 with respect to that issue, has the most significant relationship to the occurrence and the
11 parties. See Rice v. Dow Chem. Co., 875 P.2d 1213, 1217 (Wash. 1994) (citing the
12 Restatement (Second) of Conflict of Laws § 145(1)). The court evaluates the following
13 contacts with each potentially interested state: (1) the place where the injury occurred, (2)
14 the place where the conduct causing the injury occurred, (3) the domicile, residence,
15 nationality, place of incorporation and place of business of the parties, and (4) the place
16 where the relationship, if any, between the parties is centered. Id. In personal injury
17 cases, the law of the state where the injury occurred applies unless another state has a
18 greater interest in determination of a particular issue. See Martin v. Goodyear Tire &
19 Rubber Co., 61 P.3d 1196, 1199 (Wash. Ct. App. 2003) (citation omitted). According to
20 the complaint, Mr. Masood resided in Oregon during the occurrence of events causing
21 him distress. Compl. ¶ 1. His emotional distress, i.e., the injury, thus occurred in
22 Oregon. While the conduct causing the injury allegedly occurred primarily in Pakistan,
23 neither Mr. Masood nor Ms. Saleemi resides there; Mr. Masood is a resident of Oregon
24 and Ms. Saleemi is a resident of Washington. Id. On the facts as alleged, the court
25 concludes that Oregon, the situs of the alleged injury, has the most significant
26 relationship to the occurrence and the parties.
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1 To state a claim for IIED under Oregon law, a plaintiff must set forth facts
2 demonstrating the following elements: (1) the defendant intended to inflict severe
3 emotional distress on the plaintiff; (2) the defendant's acts were the cause of the
4 plaintiff's severe emotional distress; and (3) the defendant's acts constituted an
5 extraordinary transgression of the bounds of socially tolerable conduct. McGanty v.
6 Staudenraus, 901 P.2d 841, 849 (Or. 1995) (quoting Sheets v. Knight, 779 P.2d 1000,
7 1009 (Or. 1989)).

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9 Mr. Masood's allegations, although conclusory, are sufficient to satisfy the intent
10 and proximate cause elements of an IIED claim. Mr. Masood alleges that Ms. Saleemi's
11 actions "were undertaken for the purpose" of causing Mr. Masood emotional distress,
12 which proximately caused mental distress, depression, and anxiety. Compl. ¶¶ 29-30.

13 The third element, whether the complaint sufficiently alleges conduct that
14 constituted an extraordinary transgression of the bounds of socially tolerable conduct, is a
15 question of law for the court. Harris v. Pameco Corp., 12 P.3d 524, 529 (Or. Ct. App.
16 2000). Determining whether the alleged conduct is sufficiently extreme or outrageous is
17 a "fact-specific inquiry" made on a "case-by-case basis considering the totality of the
18 circumstances." Lathrope-Olson v. Dept. of Transp., 876 P.2d 345, 346 (Or. Ct. App.
19 1994). The factors that may be relevant to the inquiry include, whether a special
20 relationship exists between the parties, whether the conduct was undertaken for an
21 ulterior purpose or to take advantage of an unusually vulnerable individual, and the
22 setting in which the conduct occurred – for example, in a public venue or within the
23 employment context. Rosenthal v. Erven, 17 P.3d 558, 560-61 (Or. Ct. App. 2001).

24 Although Mr. Masood alleges that Ms. Saleemi's ulterior motive was her own
25 personal economic gain in diverting inheritance to herself, the setting in which the
26 conduct occurred was not a public venue or within the employment context; nor does the
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1 complaint allege that Mr. Masood is unusually vulnerable. The other factor to consider,
2 the relationship between the parties, is perhaps the most important in determining what
3 type of conduct is actionable. “[A] defendant’s position or role *vis-à-vis* a plaintiff may
4 be one that imposes on the defendant a greater obligation to refrain from subjecting the
5 victim to abuse, fright, or shock than would be true in arm’s length encounters among
6 strangers.” Willams v. Tri-County Metro. Transp., 958 P.2d 202, 204 (Or. Ct. App.
7 1998) (quotation omitted). In fact, the lack of such a relationship generally defeats a
8 conclusion that the conduct is actionable through an IIED claim. Delaney v. Clifton, 41
9 P.3d 1099, 1107 fn.7 (Or. Ct. App. 2002) (listing special relationships in successfully
10 pleaded claims, including employer/employee, landlord/tenant, supervisor/employee, and
11 pastor-therapist/parishioner-patient).

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13 While Mr. Masood and Ms. Saleemi are brother and sister, their relationship
14 imposes no fiduciary obligation. Indeed, to approve of Mr. Masood’s claim would
15 require the court to accept the seemingly ill-advised conclusion that a sister owes her
16 brother a greater obligation to refrain from subjecting him to abuse, fright, or shock.
17 Although Ms. Saleemi and her mother may have had a special relationship, based
18 primarily on Ms. Saleemi’s agreement to take care of her ailing mother, Oregon courts
19 have been reluctant to allow, as here, the assertion of an IIED claim by a third-party to a
20 special relationship.⁷ In Delaney, a patient’s former husband sued her professional
21 counselor and clinical psychologist for IIED based on the misdiagnosis of his then-
22 spouse’s condition. Id. at 1104. Noting that “[s]evere distress to other family members is
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26 ⁷The Oregon Supreme Court has not expressly recognized a “third-party” IIED claim, nor
27 identified its limits. Delaney 41 P.3d at 1105. Specifically, the Oregon Supreme Court has not
28 adopted the view of Restatement (Second) of Torts § 46(2) (1965), which limits recovery for a
“third-party” IIED claim to circumstances where the injurious conduct was directed at a plaintiff’s
immediate family member and the plaintiff was physically “present” at the time of the conduct. Id.

1 predictable and perhaps even inevitable” in “many therapy situations,” the court declined
2 to put therapists in the “untenable position of potentially compromising their judgment . .
3 . in order to safeguard the emotional well-being of persons outside the patient-therapist
4 relationship.” Id. at 1107-08. Relying on Delaney, a federal district court dismissed a
5 plaintiff’s IIED claim under Oregon law against his niece, finding that, “although they
6 were related by blood” the plaintiff’s niece owed him no heightened duty of care.
7 Hutchens v. Hutchens-Collins, No. 04-281, 2005 WL 1801670 at *3-*4 (D. Or. June 28,
8 2005). In Hutchens, the plaintiff alleged that his niece had orchestrated changes in his
9 mother’s financial affairs, and thus claimed that the sight of his mother (distraught over
10 her finances), combined with the realization that he would be deprived of an inheritance,
11 triggered severe emotional distress. Id. at *3. In dismissing the claim, the Hutchens
12 court observed:
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14 [N]eedless to say a dispute among family members surrounding the end of a
15 relative’s life and disposition of the relative’s belongings necessarily deals with
16 inherently and emotional and stressful issues. The conduct of some family
17 members is substantially certain to cause severe emotional distress to other
18 family members. To allow an IIED claim under such circumstances is
19 problematic at best.

20 Id. at *4. Those concerns are directly applicable here.

21 Considering, in particular, the absence of a special relationship, the court
22 concludes that the complaint does not plead sufficiently outrageous conduct from Mr.
23 Masood’s vantage point. In essence, Mr. Masood alleges that upon learning of Ms.
24 Saleemi’s conduct *vis-à-vis* their mother, he suffered emotional distress as a collateral
25 consequence of his mother’s suffering. The most egregious of Ms. Saleemi’s alleged acts
26 include the kidnapping of Ms. Shahood, concealing her whereabouts, denying her
27 medication and medical care to induce fraud, and concealing the location and
28 circumstances of her death. See Am. Compl. Mr. Masood does not purport to have

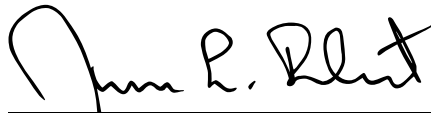
1 personally witnessed this conduct or its effect on Ms. Shahood, which occurred entirely
2 in Pakistan. Notably, according to the amended complaint, Mr. Masood did not even
3 discover Ms. Saleemi's conduct until two or three years after Ms. Shahood's death in
4 2003. Id. ¶ 16. Although these allegations may paint a frightening scenario as to Ms.
5 Shahood, Mr. Masood's alleged experience does not rise to that level. That Mr. Masood
6 allegedly suffered distress, years after abusive acts took place against a third party, is too
7 diluted an experience to support his own claim for IIED. The court thus concludes that
8 Ms. Saleemi's acts did not constitute an extraordinary transgression of the bounds of
9 socially tolerable conduct as to Mr. Masood. Because Mr. Masood fails to state a claim
10 upon which relief may be granted, the court grants Ms. Saleemi's motion for summary
11 judgment in dismissing this claim.
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13 IV. CONCLUSION

14 For the reasons stated above, the court GRANTS Ms. Saleemi's motion for
15 summary judgment (Dkt. # 48). The court DENIES as moot Mr. Masood's motion to lift
16 the stay on discovery (Dkt. # 50).
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18 The court directs the clerk to enter judgment consistent with this order.

19 DATED this 13th day of July, 2007.
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23 _____
24 JAMES L. ROBART
25 United States District Judge
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